



# Memorandum

TO: CITY COUNCIL

FROM: Mayor Chuck Reed

SUBJECT: SEE BELOW

DATE: July 30, 2010

APPROVED:

*Chuck Reed*

DATE:

*7/30/10*

**SUBJECT: REVISED LANGUAGE FOR CHARTER AMENDMENT TO LIMIT THE POWERS OF OUTSIDE ARBITRATORS**

The changes in language below, identified with strikeover (deletions) and underlines (additions), are the result of meeting and consulting with representatives of the POA and Local 230 and are made to address some of their concerns, and also reflect comments from the City Attorney to clarify some of the provisions.

RECOMMENDATION

1. Direct staff to submit the following ballot language to the Registrar of Voters for the November ballot to seek voter approval of amending the Charter to place limits on the powers of outside arbitrators as follows:

Ballot Question:

To provide fiscal stability, control costs, and help maintain the level of City services being provided to residents, shall the Charter be amended to permit binding arbitration only if require outside arbitrators are (1) required to base awards to City employees primarily on the City's ability to pay; and (2) prohibited from creating ~~creation of any unfunded liability-ies for the City,~~ increasing police and firefighter compensation more than the rate granted to other bargaining units or more than the rate of increase in General Fund revenues, and or granting retroactive benefits?

Charter Amendment:

Amend San José City Charter, SECTION 1111. Compulsory Arbitration for Fire and Police Department Employee Disputes by adding:

Notwithstanding any other provision of the Charter to the contrary, the authority, jurisdiction and powers of the Board of Arbitrators are limited by the provisions of this amendment. These limitations are intended to help ensure that City services are not reduced to pay for increases in compensation for employees, that the costs of employee compensation are sustainable, and that good faith bargaining is the primary means of

**resolving issues, and that decisions of the arbitrators are made in the best public interest and promotes the welfare of the public.**

**In all arbitration proceedings, the primary factor in decisions regarding compensation shall be the City's ability to pay for employee compensation out of ongoing revenues without reducing services, and the financial condition of the City and its ability to meet the cost of the award with ongoing revenues without reducing services shall outweigh all other factors considered by the arbitrators. No arbitration award may be issued unless a majority of the Arbitration Board determines, based upon a fair and thorough review of the City's financial condition and a cost analysis of the parties' last offers, that the City can meet the cost of the award from on-going revenues without reducing City services. The arbitrators shall also consider and give substantial weight to the rate of increase or decrease of compensation approved by the City Council for other bargaining units.**

**Calculation of compensation shall include all costs to the City for all salary and benefits provided to employees, including but not limited to wages, special pay, premium pay, incentive pay, retirement, healthcare, vacation, paid time off and holidays.**

**~~The Board of Arbitrators is prohibited from making, approving or interpreting any contract, memorandum, agreement, award, grant, decision, resolution or ordinance to allow or require the City to increase employee pay or benefits or make changes in terms and conditions of employment in any way that:~~**

- ~~a) increases compensation more than the rate of increase or decreases compensation less than the rate of decrease that has been approved by the City Council by agreement or imposition for any other bargaining unit for the same time period;~~
- ~~b) requires a compensation increase greater than the rate of increase in revenues from the sales tax, property tax, utility tax and phone tax averaged over the prior five years;~~
- ~~c) grants retroactive compensation increases or creates an unfunded liability;~~
- ~~d) conflicts with or interferes with management or operational decisions made by the Police Chief or the Fire Chief~~

**Additionally, the Board of Arbitrators shall not render a decision, or issue an award, that:**

- 1. increases the projected cost of compensation for the bargaining units at a rate that exceeds the rate of increase in revenues from the sales tax, property tax, utility tax and phone tax averaged over the prior five fiscal years; or**
- 2. retroactively increases or decreases compensation, including, but not limited to, enhancements to pension and retiree health benefit for service already rendered;**
- or**
- 3. creates a new or additional unfunded liability for which the City would be obligated to pay; or**

**4. deprives or interferes with the discretion of the Police Chief or Fire Chief to make managerial, operational or staffing decisions, rules, orders and policies in the interest of the effective and efficient provision of police and fire services to the public.**

**Except as may be specified otherwise by state or federal law, all arbitration proceedings hearings shall be open to the public and all documents presented to the arbitrators for ~~consideration~~ submitted in arbitration shall be public records.**

**Disputes over the authority, jurisdiction, or powers of arbitrators or interpretation of the meaning of the terms of this Section may be resolved by petition to the Superior Court of Santa Clara County. If the parties do not agree on the selection of an arbitrator, either party may petition the Superior Court for the appointment of an arbitrator who shall be a retired Judge of the Superior Court.**

**~~If any of the provisions of this amendment are ruled to be invalid or are prohibited from being implemented, the provisions of Charter Section 1111 are suspended until such time as these provisions are implemented.~~**

**The voters declare that the provisions of this Section are not severable, and none would have been enacted without the others. Should any portion of this Section 1111 be enjoined or declared invalid, all provisions shall be deemed invalid and inoperative and there shall be no compulsory arbitration for fire and police department employee disputes.**

**Compliance with the provisions of this Section shall be mandatory and enforceable pursuant to section 1085 of the Code of Civil Procedure; failure to comply with these provisions shall also constitute an act in excess of jurisdiction.**

**~~These provisions shall be effective immediately upon approval passage by the voters but shall not apply to a bargaining unit during the term of a collective bargaining agreement that was reached through negotiations prior to voter approval of this amendment., and shall apply to any arbitration in which hearings commence after November 2, 2010.~~**

The following text includes the changes in language without strikeouts and underlines:

**RECOMMENDATION**

1. Direct staff to submit the following ballot language to the Registrar of Voters for the November ballot to seek voter approval of amending the Charter to place limits on the powers of outside arbitrators as follows:

**Ballot Question:**

**To provide fiscal stability, control costs, and maintain City services to residents, shall the Charter be amended to permit binding arbitration only if outside arbitrators are (1)**

**required to base awards to employees primarily on the City's ability to pay; and (2) prohibited from creating any unfunded liability for the City, increasing police and firefighter compensation more than the rate of increase in General Fund revenues, or granting retroactive benefits?**

Charter Amendment:

**Amend San José City Charter, SECTION 1111. Compulsory Arbitration for Fire and Police Department Employee Disputes by adding:**

**Notwithstanding any other provision of the Charter to the contrary, the authority, jurisdiction and powers of the Board of Arbitrators are limited by the provisions of this amendment. These limitations are intended to help ensure that City services are not reduced to pay for increases in compensation for employees, that the costs of employee compensation are sustainable, that good faith bargaining is the primary means of resolving issues, and that decisions of the arbitrators are made in the best public interest and promotes the welfare of the public.**

**In all arbitration proceedings, the primary factor in decisions regarding compensation shall be the City's ability to pay for employee compensation out of ongoing revenues without reducing services, and the financial condition of the City and its ability to meet the cost of the award with ongoing revenues without reducing services shall outweigh all other factors considered by the arbitrators. No arbitration award may be issued unless a majority of the Arbitration Board determines, based upon a fair and thorough review of the City's financial condition and a cost analysis of the parties' last offers, that the City can meet the cost of the award from on-going revenues without reducing City services. The arbitrators shall also consider and give substantial weight to the rate of increase or decrease of compensation approved by the City Council for other bargaining units.**

**Calculation of compensation shall include all costs to the City for all salary and benefits provided to employees, including but not limited to wages, special pay, premium pay, incentive pay, retirement, healthcare, vacation, paid time off and holidays.**

**Additionally, the Board of Arbitrators shall not render a decision, or issue an award, that:**

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- 2. retroactively increases or decreases compensation, including, but not limited to, enhancements to pension and retiree health benefit for service already rendered; or**
- 3. creates a new or additional unfunded liability for which the City would be obligated to pay; or**
- 4. deprives or interferes with the discretion of the Police Chief or Fire Chief to make managerial, operational or staffing decisions, rules, orders and policies in the interest of the effective and efficient provision of police and fire services to the public.**

**Except as may be specified otherwise by state or federal law, all arbitration hearings shall be open to the public and all documents submitted in arbitration shall be public records.**

**Disputes over the authority, jurisdiction, or powers of arbitrators or interpretation of the meaning of the terms of this Section may be resolved by petition to the Superior Court of Santa Clara County. If the parties do not agree on the selection of an arbitrator, either party may petition the Superior Court for the appointment of an arbitrator who shall be a retired Judge of the Superior Court.**

**The voters declare that the provisions of this Section are not severable, and none would have been enacted without the others. Should any portion of this Section 1111 be enjoined or declared invalid, all provisions shall be deemed invalid and inoperative and there shall be no compulsory arbitration for fire and police department employee disputes.**

**Compliance with the provisions of this Section shall be mandatory and enforceable pursuant to section 1085 of the Code of Civil Procedure; failure to comply with these provisions shall also constitute an act in excess of jurisdiction.**

**These provisions shall be effective immediately upon passage by the voters, and shall apply to any arbitration in which hearings commence after November 2, 2010.**